
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**NOTICE 112 OF 2019****JOHN STEENHUISEN, MP****GENERAL INTELLIGENCE LAWS AMENDMENT BILL, 2019****NOTICE OF INTENTION TO INTRODUCE THE GENERAL INTELLIGENCE LAWS AMENDMENT BILL, 2019, A PRIVATE MEMBER'S BILL, INTO PARLIAMENT AND INVITATION FOR PUBLIC COMMENT**

Mr John Steenhuisen, MP acting in accordance with section 75 of the Constitution of the Republic of South Africa, 1996, intends to introduce the General Intelligence Laws Amendment Bill, 2019 in Parliament during the first quarter of 2019. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

Intelligence-related legislation contain several legislative lacunas that can readily be manipulated or abused by elements of the State Security Agency ("SSA"). If these lacunae are combined with certain shortcomings in the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002) ("RICA"), such abuse actively threatens and imposes on the privacy of all South Africans. The processes regulating the authorisation of interception are further rife for abuse and misrepresentation and must be addressed to ensure a process that is fair and limited only to those instances where interception cannot be avoided.

This Bill seeks to clarify the application of certain aspects of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994) by regulating the collection of signals intelligence, limiting the functions of the SSA and regulating the sharing of collected information. It will further seek to amend RICA to broaden the reporting obligation of the designated judge and various government role-players in their authorisation and use of interception, as the case may be. It further seeks to allow for the appointment of at least three designated judges to deal with interception applications, while requiring that an approach be followed that such applications should not be granted unless compelling reasons exist that it should. Lastly, the Bill seeks to prescribe a procedure by which the Director-General of the SSA is appointed, which will require the nomination and vetting of candidates that form part of the shortlist for the position, with all shortlisted candidates being scrutinised by an *ad hoc*

parliamentary selection committee. The President will retain the constitutional authority to appoint a candidate.

This Bill seeks to amend the National Strategic Intelligence Act, 1994 to provide that:

- The interception of communication may only be undertaken as a method of last resort;
- Cooperation of the Agency with foreign entities be limited to specific jurisdictional limitations;
- The Agency only be permitted to collect signals intelligence in specific circumstances;
- The Agency may only disseminate information collected incidentally with other State authorities if so permitted by a designated judge or in a closed list of circumstances;
- Any Agency official who fails to comply with the prescribed authorisation procedures be guilty of an offence.

This Bill further seeks to amend the Intelligence Services Act, 2002 to provide for:

- The updating of this Act regarding which government components make up the State Security Agency;
- The nomination and consideration of candidates for the position of Director-General for the Agency with the objective of providing a list of candidates for consideration by the President in making such appointment.

This Bill seeks to amend the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 to provide for:

- The inclusion and alignment of certain crucial definitions;
- Annual judicial reporting by the designated judge to Parliament on interception requests;
- A judicial presumption against the granting of interception requests by the designated judge ;
- Annual reporting by government departments to Parliament on interception requests;
- The limitation of an electronic communications service provider's liability in instances where it discloses information in accordance with the Act;
- The compulsory disclosure by an electronic communications service provider to a customer of interception requests made in respect of that customer;
- A minimum of three designated judges be appointed by the Minister.

The Bill will be available on the website of the Democratic Alliance (<https://www.da.org.za/>) once it has been certified by the Chief Parliamentary Legal Adviser or a parliamentary legal advisor designated by him or her as required by Rule 279(4) of the Rules of the National Assembly (9th Edition). It may also, after introduction, be obtained from:

The Democratic Alliance

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Interested parties and institutions are invited to submit written representations on the proposed content of the draft bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, P O Box 15, Cape Town 8000 or e-mailed to speaker@parliament.gov.za and copied to mariusv@da.org.za.